



August 25, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: ANPR – Member Business Loans

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the request for comments by the National Credit Union Administration (NCUA) regarding its Advance Notice of Proposed Rulemaking (ANPR) on member business loans (MBL).

The ANPR is a result of NCUA's practice to review a third of its regulations annually. We commend the NCUA for its continued efforts to ensure that its regulations are up-to-date and reduce undue burden on credit unions. We specifically commend the agency's work on the ANPR as it is critical that the agency does not unnecessarily restrict member business lending. Regulatory limitations should not expand upon existing legislative restrictions on MBLs because these restrictions already pose major challenges for credit unions who seek to meet their members' MBL needs. This is especially important today because, as NCUA is aware, many credit unions' MBL portfolios are growing. In this context, NAFCU offers the following comments on various aspects of the ANPR and NCUA's MBL regulations.

Loan-To-Value Requirement

NCUA imposes a loan-to-value (LTV) requirement of 80% on most secured MBLs. The agency requests comments on improving the provisions on the LTV requirements.

NAFCU understands that there are sound policy reasons for imposing a LTV requirement for MBLs. However, we believe that sound policymaking related to MBLs must take into account that significant restrictions on MBLs place credit unions in competitive disadvantage

because other financial institutions' business lending practices are significantly less restricted. Modifying the LTV requirement could reduce the disadvantages facing credit unions.

We believe that the LTV for MBLs should be modified to allow credit unions to issue loans at higher than 80% LTV. Many credit unions have adequate capital, expertise and demonstrated ability to assess risks on MBLs they issue. These qualities diminish the necessity for imposing the LTV requirement on these credit unions. We recommend that the NCUA make changes to the provisions on the LTV requirements so that credit unions that can demonstrate they have adequate capital and expertise, such as those that qualify for Regulatory Flexibility (RegFlex) programs under Part 742 of NCUA's regulations, may offer MBLs with LTV ranges from 85% to 95%.

Construction and Development LTV Requirement

The ANPR requests comments on whether and how the NCUA could ease restrictions on construction and development (C&D) loans. Currently, the LTV requirement for C&D loans is at 75%. The NCUA reasons that the LTV requirement is lower than the conventional 80% requirement for other loans securitized by collateral because C&D loans are riskier.

NAFCU reiterates our position that the NCUA regulations should not place credit unions in a competitive disadvantage. We recognize that LTV requirements may be a useful tool to leverage against the risk posed by C&D loans. However, we do not believe that risk associated with C&D loans justifies the one-size-fits-all restriction of 75% LTV. We believe that where a credit union possesses the appropriate expertise, it should be allowed greater flexibility to manage risk. A credit union that can prove that it possesses the expertise in this type of loans should not be in a competitive disadvantage against other lenders.

Accordingly, we urge the NCUA to amend its MBL regulations so that credit unions that can show they have the expertise in the field may make C&D loans up to 80% LTV. We note that the easing of this restriction on such credit unions would greatly benefit not only the credit unions, but also the member-businesses because it would allow them to have capital flexibility.

Vehicle Lending and MBLs

Under current regulations, LTV requirements do not apply to loans secured by consumer type vehicles, provided that the vehicle is not part of a fleet. NCUA policy defines fleet to generally mean two or more vehicles used in a business that requires the use of multiple vehicles. NCUA's regulations are grounded on the notion that vehicles used for businesses depreciate in value more quickly than consumer type vehicles.

NAFCU strongly urges the NCUA to modify its policy on fleet vehicles. The present policy on fleet vehicles does not sufficiently take into account many facts and circumstances which should reshape NCUA's approach to regulating in this field.

Vehicles Not Used for Revenue-Generating Purposes

Current NCUA policy focuses only on the member-business itself. We believe that the NCUA should also consider use of the vehicle for which the member is obtaining the loan. We believe that where a vehicle is not used for the purpose of generating revenue for the member, it should not be considered as part of a fleet of vehicles. Thus, for example, vehicle loans involving a member-business that offers its employees the use of a vehicle for personal purposes should not be considered MBLs. Or, if a partnership made up of five persons would like to buy a vehicle for each partner, these would be eligible for 100% financing. Modifying the rule so that only vehicles used for generating revenue are considered part of a fleet would enable more members to benefit from products and services their credit union offers without increasing the risk in the MBL portfolio.

As an the alternative, we recommend that where the vehicles are not used for revenue generating purposes by the member-business, the credit union be allowed to make loans on at least five vehicles without the loans being considered MBLs.

Risk Mitigated By Short Term Loans

We also believe that the LTV requirement should not be imposed on vehicle loans with terms of 48 months or less. The purpose of the LTV requirement for vehicles used for business is to guard against the increased risk posed by the more rapid depreciation of collateral. However, where asset quality is less likely to be compromised, as in the case where the loan must be repaid within 48 months or shorter, imposing the LTV requirement would be without purpose. We believe the speed of principal reduction on a 48 month loan mitigates the concern of increased risk. Thus, these short term loans should be eligible for 100% financing.

Vehicle Loans to Not-for-Profit and Government Entities

The current NCUA policy unnecessarily restricts not-for-profit, governmental and other civil service entities' ability to benefit from borrowing at lower cost from credit unions. This barrier, although unintended, should be removed. We believe that credit union lending to such entities should be encouraged and not restricted by regulation.

In order to address this matter, NAFCU recommends that the NCUA provide an exception to its fleet vehicle policy for vehicle loans to not-for-profit, governmental and other civil service entities. Credit unions' ability to better serve the needs of these entities would greatly benefit communities across the country because it would make financial sense for such organizations to borrow at lower cost, thus bolstering these entities' ability to achieve their benevolent purpose.

Applying for Waivers

The NCUA also requests comments on matters related to the waiver provisions of the MBL rule. Current regulations require a credit union to submit supporting documentation as

well as explanations for the waiver being sought. Additionally, a decision on the request need not be rendered for 45 calendar days after the request has been submitted.

NAFCU reiterates our position that restrictions on member business loans should be reduced. In addition, we strongly believe that the ability for credit unions to obtain a waiver must not only be preserved, but the process must be improved so that the option is attractive for credit unions. While the waiver option provides an important opportunity for credit unions to improve their MBL programs, we are convinced that the process, as it presently exists, is inefficient. Also, our members have conveyed to us that the existing process and standards have been inconsistently applied. Consequently, many credit unions do not pursue a waiver.

To make the option to seek a waiver more attractive for credit unions, the requirements should be reduced and the application process streamlined. Specifically, the NCUA should eliminate the requirement for analysis of prior experience under § 723.11(e). We believe that documentation showing ability to manage the activity under § 723.11(d) should be adequate for the NCUA Regional Director to make a determination on a waiver request. We also encourage the NCUA to reduce the 45 days response time to 20 calendar days.

We also recommend that the NCUA provide an alternative application process for credit unions that meet RegFlex standards. Such credit unions have demonstrated superior performance and are less likely to increase unreasonable risk to the credit union and the industry. As such, we believe that neither the documentation requirement under § 723.11(d) nor the analysis called for under § 723.11(e) should be imposed on these credit unions. Further, the response time for their requests should be reduced to 10 calendar days so that they can proceed with their loan determinations.

Loan Participations

The ANPR seeks comments on provisions that address MBL participations and member business loans. Sections 723.1(d), 723.1(e) and 723.16(b) of the NCUA regulations provide instructions on how credit unions should account for MBL participations and how the participations affect the credit union's MBL limit.

NAFCU strongly recommends that the NCUA amend these sections to clearly state NCUA's policy that MBL participations do not count against the credit union's MBL cap. MBL participations have distinct characteristics that differ from regular member business loans that the credit union issues to its own member-businesses. MBLs pose different risks from MBL participations and, consequently, should not be grouped together.

Accordingly, the NCUA should make necessary changes to its regulations to ensure that MBL participations and MBLs are not only accounted for separately, but also that participations are not aggregated with member business loans. We believe that credit union members would be the ultimate beneficiaries from this clarification.

Ms. Mary Rupp
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MBL Maturity Dates

NAFCU would like to take this opportunity to seek a modification on the current maturity limits on MBLs secured by real estate. Currently, such loans may not have maturity that exceeds fifteen (15) years.

We believe that the NCUA should pursue broad statutory authority to establish maturity limits for all business loans. In this regard, we note that the current limit on MBLs secured by real estate is inappropriate because it reduces choices for member businesses. At the same time, it stifles credit unions' ability to sell these loans in the secondary market.

NAFCU appreciates this opportunity to share its comments on the ANPR. Should you have any questions or require additional information please call me or Tessema Tefferi, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Dan Berger", with a stylized flourish at the end.

B. Dan Berger
Senior Vice President of Government Affairs
BDB/tt